

UTAH MEDICAL PRACTICE ACT

Part 1 - General Provisions

58-67-101. Title.

This chapter is known as the "Utah Medical Practice Act."

58-67-102. Definitions.

In addition to the definitions in Section 58-1-102, as used in this chapter:

- (1) "ACGME" means the Accreditation Council for Graduate Medical Education of the American Medical Association.
- (2) "Administrative penalty" means a monetary fine imposed by the division for acts or omissions determined to constitute unprofessional or unlawful conduct, as a result of an adjudicative proceeding conducted in accordance with Title 63, Chapter 46b, Administrative Procedures Act.
- (3) "Board" means the Physicians Licensing Board created in Section 58-67-201.
- (4) "Diagnose" means:
 - (a) to examine in any manner another person, parts of a person's body, substances, fluids, or materials excreted, taken, or removed from a person's body, or produced by a person's body, to determine the source, nature, kind, or extent of a disease or other physical or mental condition;
 - (b) to attempt to conduct an examination or determination described under Subsection (4)(a);
 - (c) to hold oneself out as making or to represent that one is making an examination or determination as described in Subsection (4)(a); or
 - (d) to make an examination or determination as described in Subsection (4)(a) upon or from information supplied directly or indirectly by another person, whether or not in the presence of the person making or attempting the diagnosis or examination.
- (5) "LCME" means the Liaison Committee on Medical Education of the American Medical Association.
- (6) "Medical assistant" means an unlicensed individual working under the direct and immediate supervision of a licensed physician and surgeon and engaged in specific tasks assigned by the licensed physician and surgeon in accordance with the standards and ethics of the profession.
- (7) "Physician" means both physicians and surgeons licensed under Section 58-67-301, Utah Medical Practice Act, and osteopathic physicians and surgeons licensed under Section 58-68-301, Utah Osteopathic Medical Practice Act.
- (8) "Practice of medicine" means:
 - (a) to diagnose, treat, correct, administer anesthesia or prescribe for any human disease, ailment, injury, infirmity, deformity, pain or other condition, physical or mental, real or imaginary, or to attempt to do so, by any means or instrumentality, and by an individual in Utah or outside the state upon or for any human within the state, except that conduct described in this Subsection (8)(a) that is performed by a person legally and in accordance with a license issued under another chapter of this title does not constitute the practice of medicine;
 - (b) when a person not licensed as a physician directs a licensee under this chapter to withhold or alter the health care services that the licensee has ordered, but practice of medicine does not include any conduct under Subsection 58-67-501(2);
 - (c) to maintain an office or place of business for the purpose of doing any of the acts described in Subsection (8)(a) whether or not for compensation; or

- (d) to use, in the conduct of any occupation or profession pertaining to the diagnosis or treatment of human diseases or conditions in any printed material, stationery, letterhead, envelopes, signs, or advertisements, the designation "doctor", "doctor of medicine", "physician", "surgeon", "physician and surgeon", "Dr.," "M.D.," or any combination of these designations in any manner which might cause a reasonable person to believe the individual using the designation is a licensed physician and surgeon, and if the party using the designation is not a licensed physician and surgeon, the designation must additionally contain the description of the branch of the healing arts for which the person has a license.
- (9) "Prescription drug or device" means:
 - (a) a drug or device which, under federal law, is required to be labeled with either of the following statements or their equivalent:
 - (i) "CAUTION: Federal law prohibits dispensing without prescription"; or
 - (ii) "CAUTION: Federal law restricts this drug to use by or on the order of a licensed veterinarian"; or
 - (b) a drug or device that is required by any applicable federal or state law or rule to be dispensed on prescription only or is restricted to use by practitioners only.
- (10) "SPEX" means the Special Purpose Examination of the Federation of State Medical Boards.
- (11) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-67-501.
- (12) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-67-502, and as may be further defined by division rule.

Part 2 - Board

58-67-201. Board.

- (1) There is created the Physicians Licensing Board consisting of nine physicians and surgeons and two members of the general public.
- (2) The board shall be appointed and serve in accordance with Section 58-1-201.
- (3)
 - (a) The duties and responsibilities of the board shall be in accordance with Sections 58-1-202 and 58-1-203.
 - (b) The board may also designate one of its members on a permanent or rotating basis to:
 - (i) assist the division in reviewing complaints concerning the unlawful or unprofessional conduct of a licensee; and
 - (ii) advise the division in its investigation of these complaints.
- (4) A board member who has, under Subsection (3), reviewed a complaint or advised in its investigation may be disqualified from participating with the board when the board serves as a presiding officer in an adjudicative proceeding concerning that complaint.

Part 3 - Licensing

58-67-301. Licensure required - License classifications.

- (1) A license is required to engage in the practice of medicine, on or for any person in Utah, as a physician and surgeon, except as specifically provided in Section 58-1-307 or 58-67-305.
- (2) The division shall issue to a person who qualifies under this chapter a license in the classification of physician and surgeon.

58-67-302. Qualifications for licensure.

- (1) An applicant for licensure as a physician and surgeon, except as set forth in Subsection (2), shall:
 - (a) submit an application in a form prescribed by the division, which may include:
 - (i) submissions by the applicant of information maintained by practitioner data banks, as designated by division rule, with respect to the applicant; and
 - (ii) a record of professional liability claims made against the applicant and settlements paid by or on behalf of the applicant;
 - (b) pay a fee determined by the department under Section 63-38-3.2;
 - (c) be of good moral character;
 - (d) provide satisfactory documentation of having successfully completed a program of professional education preparing an individual as a physician and surgeon, as evidenced by having received an earned degree of doctor of medicine from:
 - (i) an LCME accredited medical school or college; or
 - (ii) a medical school or college located outside of the United States or its jurisdictions which at the time of the applicant's graduation, met criteria for LCME accreditation;
 - (e) hold a current certification by the Educational Commission for Foreign Medical Graduates or any successor organization approved by the division in collaboration with the board, if the applicant graduated from a medical school or college located outside of the United States or its jurisdictions;
 - (f) satisfy the division and board that the applicant:
 - (i) has successfully completed 24 months of progressive resident training in a program approved by the ACGME, the Royal College of Physicians and Surgeons, the College of Family Physicians of Canada, or any similar body in the United States or Canada approved by the division in collaboration with the board; or
 - (ii)
 - (A) has successfully completed 12 months of resident training in an ACGME approved program after receiving a degree of doctor of medicine as required under Subsection (1)(d);
 - (B) has been accepted in and is successfully participating in progressive resident training in an ACGME approved program within Utah, in the applicant's second or third year of postgraduate training; and
 - (C) has agreed to surrender to the division his license as a physician and surgeon without any proceedings under Title 63, Chapter 46b, Administrative Procedures Act, and has agreed his license as a physician and surgeon will be automatically revoked by the division if the applicant fails to continue in good standing in an ACGME approved progressive resident training program within the state;
 - (g) pass the licensing examination sequence required by division rule made in collaboration with the board;
 - (h) be able to read, write, speak, understand, and be understood in the English language and demonstrate proficiency to the satisfaction of the board if requested by the board; and
 - (i) meet with the board and representatives of the division, if requested, for the purpose of evaluating the applicant's qualifications for licensure.
- (2) An applicant for licensure as a physician and surgeon by endorsement shall:
 - (a) be currently licensed with a full unrestricted license in good standing in any state, district, or territory of the United States;
 - (b) have been actively engaged in the legal practice of medicine in any

state, district, or territory of the United States for not less than 6,000 hours during the five years immediately preceding the date of application for licensure in Utah;

- (c) not have any action pending against the applicant's license; and
- (d) produce satisfactory evidence of the applicant's qualifications, identity, and good standing to the satisfaction of the division in collaboration with the board.

58-67-303. Term of license - Expiration - Renewal.

- (1)
 - (a) The division shall issue each license under this chapter in accordance with a two-year renewal cycle established by division rule.
 - (b) The division may by rule extend or shorten a renewal period by as much as one year to stagger the renewal cycles it administers.
- (2) At the time of renewal, the licensee shall show compliance with continuing education renewal requirements.
- (3) Each license issued under this chapter expires on the expiration date shown on the license unless renewed in accordance with Section 58-1-308.

58-67-304. License renewal requirements.

- (1) As a condition precedent for license renewal, each licensee shall, during each two-year licensure cycle or other cycle defined by division rule, complete qualified continuing professional education requirements in accordance with the number of hours and standards defined by division rule made in collaboration with the board.
- (2) If a renewal period is extended or shortened under Section 58-67-303, the continuing education hours required for license renewal under this section are increased or decreased proportionally.

58-67-305. Exemptions from licensure.

In addition to the exemptions from licensure in Section 58-1-307, the following individuals may engage in the described acts or practices without being licensed under this chapter:

- (1) an individual rendering aid in an emergency, when no fee or other consideration of value for the service is charged, received, expected, or contemplated;
- (2) an individual administering a domestic or family remedy;
- (3)
 - (a)
 - (i) a person engaged in the sale of vitamins, health foods, dietary supplements, herbs, or other products of nature, the sale of which is not otherwise prohibited by state or federal law; and
 - (ii) a person acting in good faith for religious reasons, as a matter of conscience, or based on a personal belief, when obtaining or providing any information regarding health care and the use of any product under Subsection (3)(a)(i); and
 - (b) Subsection (3)(a) does not:
 - (i) allow a person to diagnose any human disease, ailment, injury, infirmity, deformity, pain, or other condition; or
 - (ii) prohibit providing truthful and non-misleading information regarding any of the products under Subsection (3)(a)(i);
- (4) a person engaged in good faith in the practice of the religious tenets of any church or religious belief, without the use of prescription drugs;
- (5) an individual authorized by the Department of Health under Section 26-1-30, to withdraw blood to determine the alcohol or drug content pursuant to Section 41-6-44.1;

- (6) a medical assistant while working under the direct and immediate supervision of a licensed physician and surgeon, to the extent the medical assistant is engaged in tasks appropriately delegated by the supervisor in accordance with the standards and ethics of the practice of medicine;
- (7) an individual engaging in the practice of medicine when:
 - (a) the individual is licensed in good standing as a physician in another state with no licensing action pending and no less than ten years of professional experience;
 - (b) the services are rendered as a public service and for a noncommercial purpose;
 - (c) no fee or other consideration of value is charged, received, expected, or contemplated for the services rendered beyond an amount necessary to cover the proportionate cost of malpractice insurance; and
 - (d) the individual does not otherwise engage in unlawful or unprofessional conduct; and
- (8) an individual providing expert testimony in a legal proceeding.

58-67-306. Status of licenses held on the effective date of this chapter.

An individual holding a current license as a physician and surgeon that was issued under any prior state law is considered to hold a current license in the same classification under this chapter.

Part 4 - License Denial and Discipline

58-67-401. Grounds for denial of license - Disciplinary proceedings.

Grounds for division action regarding the following are under Section 58-1-401:

- (1) refusing to issue a license to an applicant or refusing to renew the license of a licensee;
- (2) revoking, suspending, restricting, or placing on probation the license of a licensee;
- (3) assessing an administrative penalty; and
- (4) issuing a public or private reprimand to a licensee or issuing a cease and desist order.

58-67-402. Authority to assess penalty.

- (1) After proceeding pursuant to Title 63, Chapter 46b, Administrative Procedures Act, and Title 58, Chapter 1, Division of Occupational and Professional Licensing Act, the division may impose administrative penalties of up to \$10,000 for acts of unprofessional conduct under this chapter.
- (2) Assessment of a penalty under this section does not affect any other action the division is authorized to take regarding a license issued under this chapter.

58-67-403. Revocation of license - Nondisciplinary.

Revocation by the division of a license under Subsection 58-67-302(1)(f) for failure to continue on a resident training program for reasons other than unprofessional or unlawful conduct is a nondisciplinary action and may not be reported by the division as a disciplinary action against the licensee.

Part 5 - Unlawful and Unprofessional Conduct - Penalties

58-67-501. Unlawful conduct.

- (1) "Unlawful conduct" includes, in addition to the definition in Section 58-1-501:
 - (a) buying, selling, or fraudulently obtaining, any medical diploma, license, certificate, or registration;
 - (b) aiding or abetting the buying, selling, or fraudulently obtaining of any medical diploma, license, certificate, or registration;
 - (c) substantially interfering with a licensee's lawful and competent practice of medicine in accordance with this chapter by:
 - (i) any person or entity that manages, owns, operates, or conducts a business having a direct or indirect financial interest in the licensee's professional practice; or
 - (ii) anyone other than another physician licensed under this title, who is engaged in direct clinical care or consultation with the licensee in accordance with the standards and ethics of the profession of medicine; or
 - (d) entering into a contract that limits a licensee's ability to advise the licensee's patients fully about treatment options or other issues that affect the health care of the licensee's patients.
- (2) "Unlawful conduct" does not include:
 - (a) establishing, administering, or enforcing the provisions of a policy of disability insurance by an insurer doing business in this state in accordance with Title 31A, Insurance Code;
 - (b) adopting, implementing, or enforcing utilization management standards related to payment for a licensee's services, provided that:
 - (i) utilization management standards adopted, implemented, and enforced by the payer have been approved by a physician or by a committee that contains one or more physicians; and
 - (ii) the utilization management standards does not preclude a licensee from exercising independent professional judgment on behalf of the licensee's patients in a manner that is independent of payment considerations;
 - (c) developing and implementing clinical practice standards that are intended to reduce morbidity and mortality or developing and implementing other medical or surgical practice standards related to the standardization of effective health care practices, provided that:
 - (i) the practice standards and recommendations have been approved by a physician or by a committee that contains one or more physicians; and
 - (ii) the practice standards do not preclude a licensee from exercising independent professional judgment on behalf of the licensee's patients in a manner that is independent of payment considerations;
 - (d) requesting or recommending that a patient obtain a second opinion from a licensee;
 - (e) conducting peer review, quality evaluation, quality improvement, risk management, or similar activities designed to identify and address practice deficiencies with health care providers, health care facilities, or the delivery of health care;
 - (f) providing employment supervision or adopting employment requirements that do not interfere with the licensee's ability to exercise independent professional judgment on behalf of the licensee's patients, provided that employment requirements that may not be considered to interfere with an employed licensee's exercise of independent professional judgment include:
 - (i) an employment requirement that restricts the licensee's access to patients with whom the licensee's employer does not have a contractual relationship, either directly or through contracts with one or more third-party payers; or

- (ii) providing compensation incentives that are not related to the treatment of any particular patient;
- (g) providing benefit coverage information, giving advice, or expressing opinions to a patient or to a family member of a patient to assist the patient or family member in making a decision about health care that has been recommended by a licensee; or
- (h) any otherwise lawful conduct that does not substantially interfere with the licensee's ability to exercise independent professional judgment on behalf of the licensee's patients and that does not constitute the practice of medicine as defined in this chapter.

58-67-502. Unprofessional conduct.

"Unprofessional conduct" includes, in addition to the definition in Section 58-1-501, using or employing the services of any individual to assist a licensee in any manner not in accordance with the generally recognized practices, standards, or ethics of the profession, state law, or division rule.

58-67-503. Penalties for unlawful and unprofessional conduct.

- (1) Any person who violates the unlawful conduct provisions of Section 58-67-501, or Subsection 58-1-501(1)(a) or 58-1-501(1)(c) is guilty of a third degree felony.
- (2) The division may assess administrative penalties in accordance with the provisions of Section 58-67-402 for acts of unprofessional conduct.

Part 6 - Impaired Physician

58-67-601. Mentally incompetent or incapacitated physician.

- (1) As used in this section:
 - (a) "Incapacitated person" has the same definition as in Section 75-1-201.
 - (b) "Mentally ill" has the same definition as in Section 62A-12-202.
- (2) If a court of competent jurisdiction determines a physician is an incapacitated person or that he is mentally ill and unable to safely engage in the practice of medicine, the director shall immediately suspend the license of the physician upon the entry of the judgment of the court, without further proceedings under Title 63, Chapter 46b, Administrative Procedures Act, regardless of whether an appeal from the court's ruling is pending. The director shall promptly notify the physician, in writing, of the suspension.
- (3) (a) If the division and a majority of the board find reasonable cause to believe a physician, who is not determined judicially to be an incapacitated person or to be mentally ill, is incapable of practicing medicine with reasonable skill regarding the safety of patients, because of illness, excessive use of drugs or alcohol, or as a result of any mental or physical condition, the board shall recommend that the director file a petition with the division, and cause the petition to be served upon the physician with a notice of hearing on the sole issue of the capacity of the physician to competently and safely engage in the practice of medicine.
 - (b) The hearing shall be conducted under Section 58-1-109, and Title 63, Chapter 46b, Administrative Procedures Act, except as provided in Subsection (4).
- (4) (a) Every physician who accepts the privilege of being licensed under this chapter gives consent to:
 - (i) submitting at his own expense to an immediate mental or physical examination when directed in writing by the division and a

- majority of the board to do so; and
- (ii) the admissibility of the reports of the examining physician's testimony or examination, and waives all objections on the ground the reports constitute a privileged communication.
- (b) The examination may be ordered by the division, with the consent of a majority of the board, only upon a finding of reasonable cause to believe:
 - (i) the physician is mentally ill or incapacitated or otherwise unable to practice medicine with reasonable skill and safety; and
 - (ii) immediate action by the division and the board is necessary to prevent harm to the physician's patients or the general public.
- (c) (i) Failure of a physician to submit to the examination ordered under this section is a ground for the division's immediate suspension of the physician's license by written order of the director.
- (ii) The division may enter the order of suspension without further compliance with Title 63, Chapter 46b, Administrative Procedures Act, unless the division finds the failure to submit to the examination ordered under this section was due to circumstances beyond the control of the physician and was not related directly to the illness or incapacity of the physician.
- (5) (a) A physician whose license is suspended under Subsection (2) or (3) has the right to a hearing to appeal the suspension within ten days after the license is suspended.
- (b) The hearing held under this subsection shall be conducted in accordance with Sections 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists for the continuance of the order of suspension in order to prevent harm to the physician's patients or the general public.
- (6) A physician whose license is revoked, suspended, or in any way restricted under this section may request the division and the board to consider, at reasonable intervals, evidence presented by the physician, under procedures established by division rule, regarding any change in the physician's condition, to determine whether:
 - (a) he is or is not able to safely and competently engage in the practice of medicine; and
 - (b) he is qualified to have his license to practice under this chapter restored completely or in part.

Part 7 - Immunity Provisions

58-67-701. Immunity provisions apply.

Title 58, Chapter 13, Health Care Providers Immunity from Liability Act, applies to licensees under this chapter.

Part 8 - Practice Standards

58-67-801. Disclosure of financial interest by licensee.

- (1) Licensees under this chapter may not refer patients, clients, or customers to any clinical laboratory, ambulatory or surgical care facilities, or other treatment or rehabilitation services such as physical therapy, cardiac rehabilitation, radiology services, dispensing optical lens facility, or lithotripsy, in which the licensee or a member of the licensee's immediate family has any financial relationship as that term is described in 42 U.S.C. 1395nn, unless the licensee at the time of making the referral discloses that relationship, in writing, to the patient, client, or customer.

- (2) The written disclosure under Subsection (1) shall also state the patient may choose any facility or service center for purpose of having the laboratory work or treatment service performed.

58-67-802. Form of practice.

- (1) A physician and surgeon licensed under this chapter may engage in practice as a physician and surgeon, or in the practice of medicine only as an individual licensee; but as an individual licensee, he may be:
 - (a) an individual operating as a business proprietor;
 - (b) an employee of another person;
 - (c) a partner in a lawfully organized partnership;
 - (d) a lawfully formed professional corporation;
 - (e) a lawfully organized limited liability company;
 - (f) a lawfully organized business corporation; or
 - (g) any other form of organization recognized by the state which is not prohibited by division rule made in collaboration with the board.
- (2) Regardless of the form in which a licensee engages in the practice of medicine, the licensee may only permit the practice of medicine in that form of practice to be conducted by an individual:
 - (a) licensed in Utah as a physician and surgeon under Section 58-67-301 or as an osteopathic physician and surgeon under Section 58-68-301; and
 - (b) who is able to lawfully and competently engage in the practice of medicine.

58-67-803. Medical records - Electronic records.

- (1) Medical records maintained by a licensee shall:
 - (a) meet the standards and ethics of the profession; and
 - (b) be maintained in accordance with division rules made in collaboration with the board.
- (2) Medical records under this section may be maintained by an electronic means if the records comply with Subsection (1).

UTAH MEDICAL PRACTICE ACT

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